

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7655 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KHANUSING DHULSING RATHOD THROWIFE MANJUKUVARBEN KHANUSING

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner, a retired military personnel, challenges the order of preventive detention dated 1st September, 1998 made by the Commissioner of Police, Vadodara City, under the powers conferred upon him under

sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. It is alleged that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act. One offence of violation of Prohibition law has been registered against the petitioner. Upon the information received, the petitioner's residence was raided and a large quantity of English liquor was recovered from his premises. Besides, the police has recorded some three statements of witnesses, whose identity has been withheld. The first of the witnesses has said that he is a vehicle driver and on 11th July, 1998, the petitioner wanted to transport liquor in the witness's vehicle. On the witness having refused to transport the liquor on behalf of the petitioner, the petitioner feeling enraged, had beaten the witness and was threatened by an open knife and when the people gathered there, they had been lathi charged by the petitioner's accomplices and associates, as a result the people had to run away for safety. The second of the witnesses has stated that on 1st August, 1998, the witness and his friend were ruthlessly beaten by the petitioner and his associates. When the witnesses tried to escape, he was chased by the petitioner and his associates with lethal weapons. The third of the witnesses has said that on 5th June, 1998, the petitioner had demanded that witness should store liquor at his residence. On the witness refusing to do so, the witness was badly beaten and persued by the petitioner and his associates, armed with hockey and sticks. The incident caused disturbance to the even tempo of life in the area and the public tranquillity was disturbed.

4. In the grounds of detention, the detaining authority has recorded his subjective satisfaction in respect of the petitioner being a bootlegger and his activities being prejudicial to the maintenance of public order. Besides, the detaining authority has also observed that the petitioner and his accomplices, with a view to earning more profit, may indulge in country liquor which is injurious to human health and may adversely affect the public health. The above referred observation appears to have been made on the basis of statement made by the third witness. However, the said observation is not supported by any evidence. Besides, the statement of third witness has not been verified at all, either by the detaining authority himself or through any of his subordinate officers or even by the police officer who had recorded the statement. I am, therefore,

of the view that while recording his subjective satisfaction, the detaining authority has relied upon some extraneous material. The subjective satisfaction recorded by him is not supported by the material on record. The same is, therefore, not sustainable.

5. Petition is, therefore, allowed. The impugned order of detention dated 1st September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. Petition, unless is required to be detained in some other case, be released forthwith.

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Prakash\*